

1 Schweet Linde & Coulson, PLLC
2 575 S. Michigan St.
3 Seattle, WA 98108
4 P: (206) 275-1010 F: (206) 381-0101

Honorable Judge Marc Barreca
Location: Zoom (instructions below)
Hearing Date: March 9, 2022
Hearing Time: 10:00 a.m.
Response Due: March 2, 2022

6 IN THE U.S. BANKRUPTCY COURT FOR THE
7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8
9 In re
10 TIMOTHY DONALD EYMAN,

11 Debtor.

12 Chapter 7
13 Case No. 18-14536-MLB
14 TRUSTEE'S OBJECTION TO DEBTOR'S
15 EXEMPTIONS; NOTICE OF HEARING
16 THEREON, AND CERTIFICATE OF
17 SERVICE

18
19 I. HEARING NOTICE

20 TO: CLERK OF THE BANKRUPTCY COURT
21 TO: TIMOTHY DONALD EYMAN, DEBTOR
22 TO: LARRY B. FEINSTEIN, COUNSEL FOR DEBTOR
23 TO: KAREN EYMAN, DEBTOR'S NON-FILING SPOUSE
24 TO: MARC STERN, COUNSEL FOR KAREN EYMAN
25 TO: U.S. TRUSTEE

26 PLEASE TAKE NOTICE that Virginia Burdette ("Trustee"), solely in her capacity as the
duly appointed Chapter 7¹ Trustee in the above captioned proceeding has filed a motion seeking
an order (1) denying or limiting the claimed homestead exemption in the above captioned
proceeding asserted by Timothy Donald Eyman ("Debtor") on real property located at 11913 59th
Ave. W., Mukilteo, WA 98275 ("Real Property"), (2) denying any homestead exemption to
Karen Eyman ("Mrs. Eyman") on the estate's interest in the Real Property, and (3) extending the
time for her to file further objections to exemptions for 90 days pursuant to FRBP 4003(b)(1).

27 The Motion is set for hearing as follows:

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Judge: Honorable Marc Barreca	Time: 10:00 A.M.
Place of Hearing: Zoom https://www.zoomgov.com/j/1607704823?pwd=TUYxditUQ211OWdNeXVuYlZ5bTdBT09 Meeting ID: 160 770 4823 Passcode: 781136 One tap mobile +16692545252,,1607704823# US (San Jose) +16692161590,,1607704823# US (San Jose) Dial by your location +1 669 254 5252 US (San Jose) +1 669 216 1590 US (San Jose) +1 646 828 7666 US (New York) +1 551 285 1373 US Meeting ID: 160 770 4823	Date: March 9, 2022

IF YOU OPPOSE the Motion, you must file your written response with the Clerk's office of the bankruptcy court and deliver copies to the undersigned NOT LATER THAN THE RESPONSE DATE, which is **March 2, 2022**, as indicated above. If you file a response, then you are also required to appear at the hearing.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and strike the hearing.

II. RELIEF REQUESTED

COMES NOW the Trustee, and files this Objection ("Objection") to the Amended Exemptions Asserted by Debtor in his amended Schedule C, Dkt. 427 at 11-13. Further, the Trustee requests an extension of time to object to the Debtor's exemption pursuant to FRBP 4003(b)(1).

III. FACTUAL SUMMARY

1. Debtor voluntarily commenced this proceeding as a Chapter 11 on November 28, 2018 ("Petition Date"). ECF Dkt. No. 1.

1. 2. Though Debtor was married on the Petition Date, his spouse, Mrs. Eyman, did not join in
the filing of the bankruptcy petition. *Id.*

3. 3. The Debtor was able to confirm a Chapter 11 plan on April 8, 2020. Dkt. 275.

4. 4. This proceeding was converted from a Chapter 11 proceeding to a proceeding under
Chapter 7 by order of this Court on December 17, 2021. Dkt. 408.

5. 5. Trustee was appointed by order of this Court the same day the order converting the case
was entered. Dkt. 409.

6. 6. Debtor was ordered to file post-conversion schedules the same day the order converting
the case was entered. Dkt. 412.

7. 7. Debtor filed his post-conversion schedules (“Schedules”) on January 1, 2022. Dkt. 427.

8. 8. In the Schedules, Debtor listed Real Property valued at \$950,000.

9. 9. Debtor states his interest in the Real Property is “Fee Simple”, and includes the following
additional information:

10. Title in the name of Donald and Karen Eyman, husband and wife. Wife
not in bankruptcy and she claims the current statutory homestead of
\$549.000. Ownership disputed by wife. *Schedules* at 4.

11. 10. In the Schedules, Debtor asserted an exemption in the Real Property as “100% of fair
market value, up to any applicable statutory limit” under RCW 6.13.010, 020, and 030
(collectively hereinafter “Homestead RCWs”). *Schedules* at 11.

12. 11. In the initial Chapter 11 petition, Debtor indicated there were no claims secured by the
Real Property. Dkt. 1 at 27.

13. 12. The Debtor reaffirmed the information in the Chapter 11 petition was accurate in the
Schedules. *Schedules* at 1.

IV. ARGUMENT

- a. Debtor is limited to a homestead exemption of \$125,000 in equity that existed at on the Petition Date.

A debtor is entitled to claim exemptions in property of the estate that is exempt under state law “. . . on the date of the filing of the petition . . .” §522(b)(3)(A). When a case is converted, the conversion does not change, *inter alia*, the date of the filing of the petition. §348(a) *see also Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018) (“A debtor’s exemptions

1 have long been fixed at ‘the date of the filing of the [bankruptcy] petition’). On the Petition
2 Date, the homestead exemption in Washington was limited to \$125,000 for an individual or a
3 community, and limited the exemption to pre-petition value in a homestead. *Rigby v. Wilson*, 909
4 F.3d at 311.

5 The Debtor appears to be attempting to exempt the full \$950,000² in equity in the Real
6 Property through the asserted exemption. To the extent the Debtor is attempting to exempt more
7 than the \$125,000 the Debtor and the marital community of the Debtor and Mrs. Eyman are
8 entitled to, the exemption should be disallowed. In the alternative, the Court should enter an
9 order fixing the dollar amount of the Debtor’s exemption at \$125,000.
10

11 **b. Mrs. Eyman is not entitled to an exemption above and beyond what the Debtor
12 can assert.**

13 *i. A named debtor is the only party that can claim exemptions in the first
14 instance.*

15 A “debtor” is a “. . . (P)erson or municipality concerning which a case under this
16 title has been commenced.” §101(13). An individual **debtor** may claim property of the estate as
17 exempt. §522(b)(1) *emphasis added*. Only if a debtor fails to elect exemptions can another party,
18 limited to a dependent of the debtor, claim an exemption in property of the estate. Fed. R. Bankr.
19 Pro. 4003.

20 In this case, Mrs. Eyman is not a “debtor”, and the Debtor has filed a claim of
21 exemptions. The only exemptions applicable to property of this bankruptcy estate are those
22 claimed by the Debtor in his initial petition, or as properly amended³. As a result, the only
23 exemption available in the Real Property are those asserted by the Debtor, and only as allowed

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² The Trustee disputes this valuation of the Real Property. The Trustee believes the value of the
25 Real Property is approximately \$1,200,000

26 ³ There is no indication on the docket that the amended exemptions filed as part of the Schedules
were ever served on parties in interest.

1 without objection. To the extent the note regarding the Real Property in the schedules is an
2 attempt by Mrs. Eyman to claim an exemption, the Court should enter an order disallowing the
3 same as Mrs. Eyman is not entitled to claim exemptions over property of the estate.

4 *ii. Mrs. Eyman is not entitled to a separate exemption on the community's*
5 *interest in the Real Property.*

6 Members of a marital community are not allowed to claim separate homestead
7 exemptions if the result is to work an increase in the net amount of a homestead exemption
8 available. RCW 6.13.020 NEED CITATION FOR FORMER EXEMPTION STATUTE. This
9 limitation remains true after the 2021 amendment to Washington's homestead statutes. *See* RCW
10 6.13.020.

11 To the extent the notation contained in the Schedules regarding Mrs. Eyman is claiming
12 an exemption in the Real Property that is separate from the community's exemption already
13 asserted by Debtor, the Trustee objects, and requests an order disallowing any exemption claim
14 by Mrs. Eyman in the Real Property that is in addition to the exemption allowed to the Debtor.

16 **c. The Trustee requests an additional 90-days to bring further objections to**
17 **exemptions to allow her time to complete her investigation of assets.**

18 Objections to exemptions are due within 30 days of the conclusion of the meeting of
19 creditors. Fed. R. Bankr. Pro. 4003(a)(1). A court, for cause, may extend that deadline if the
20 request is made prior to the expiration of the 30 days. *Id.*

21 This case resulting from a conversion has complicated the Trustee's investigation of the
22 Debtor's assets. Not only are there issues regarding what is and is not property of the estate due
23 to the Debtor having confirmed a Chapter 11 plan, but the Trustee has also had to get up to speed
24 and intervene in the Adversary Proceeding. The Trustee believes she will need to take a 2004
25 exam of the Debtor, and potentially other entities. To accommodate her investigation requests an
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1 additional 90-days to complete her investigation, and permit her, on notice, to seek a further
2 extension of the deadline to object to exemptions for cause.

3 **V. PRAYER FOR RELIEF**

4 For the reasons stated above, the Trustee respectfully requests this Court enter an order
5 (1) denying the asserted exemption of the Debtor in the Real Property; (2) denying Mrs.
6 Eyman's exemption in the Real Property to the extent it seeks to exempt the community's
7 interest in the Real Property over and above the exemption the Debtor has already asserted; and
8 (3) extending the Trustee's deadline to object to exemptions for 90 days. In the alternative, the
9 Trustee requests this Court enter an order fixing the exemption on the community's interest in
10 the Real Property at \$125,000 and extending the deadline to object to exemptions for 90 days.

11 Respectfully submitted this 7th day of February, 2022.

12 **SCHWEET LINDE & COULSON, PLLC**

13 /s/Michael M. Sperry

14 Michael M. Sperry, WSBA#43760

15 Thomas S. Linde, WSBA#14426

16 Latife H. Neu, WSBA#33144

17 Attorney for Virginia Burdette, Chapter 7 Trustee

18 **CERTIFICATE OF SERVICE**

19 I, Michael M. Sperry, hereby certify that, on the date below, a true and correct copy of
20 the foregoing document will be delivered to the following by the Court's CM/ECF system:

21 Susan M Edison on behalf of Counter Defendant State of Washington

BCUEdison@atg.wa.gov

22 Larry B. Feinstein on behalf of Debtor Timothy Donald Eyman

1947feinstein@gmail.com, kpscordato@gmail.com; feinsteinlr71744@notify.bestcase.com

23 Dina Yunker Frank on behalf of Counter Defendant State of Washington

BCUYunker@atg.wa.gov

24 Seth Goodstein on behalf of Spec. Counsel Goodstein Law Group PLLC

sethg@roilawfirm.com, sethgoodstein@yahoo.com

1 Gregor A Hensrude on behalf of Creditor PC Klinedinst
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13 Signed at Kent, Washington on February 7, 2022.

14 /s/ Michael M. Sperry
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